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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,799	06/07/2001	Scott R. Gilbert	AROOP9909USA	9046

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,799

Applicant(s)

GILBERT, SCOTT R.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,27,34,35,62 and 70-93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26,27,34,35,62 is/are allowed.
- 6) ☒ Claim(s) 70-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claim 73 is objected to because of the following informalities: in line 2, the word "seam" (2nd occurrence) should be changed to ---edge---. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 70,78,80,83-88,91** are rejected under 35 U.S.C. 102(b) as being anticipated by Ikeda (US 4,784,864 on form PTO-1449).

For claims 70,83 & 84, Ikeda discloses a plant 8 (seaweed) container 1 comprising a receptacle 5 having a top opening 6, a closed bottom 3, and a top flap 7 of sufficient size to cover the seaweed placed in the receptacle, the receptacle and flap consisting essentially of a triangular front panel 1 and a triangular back panel 1 (col. 5, line 55), at least one of the front and back panels being triangular, the front and back panels being connected to each other along two edges 21' of the triangle (col. 5, line 56). In addition, Ikeda teaches a fold that is transverse to the first edge and that does not intersect the second edge, the top flap being formed by a portion of the front panel and a portion of the back panel. Note, the examiner is not considering flap 7 to be part of the back panel because flap 7 is a separate element which, when the flap is folded over the opening 6, the line of separation will be apparent from the panel.

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For claim 78, since the container of Ikeda is made out of a flaccid material, it will be inherent that when the panels of Ikeda are laid flat against each other when the container is in a collapsed state whereby the container may be compactly stored until ready for use.

For claim 80, Ikeda teaches a method of making a batch of the plant containers set forth in claim 70, said method comprising the steps of: overlaying a first web 1 and a second web 1 of a suitable film material; forming essentially permanently sealed seams 21' between the first and second webs corresponding to the desired shape of the panels; and dividing the so-seamed webs into the containers. See fig. 12 and col. 5, lines 54-68, col. 6, lines 1-4.

For claim 85, Ikeda teaches wherein the first edges and the second edges of the front and back panels are substantially permanently connected to each other.

For claim 86, Ikeda teaches wherein the panels are made of suitable film (col. 3, lines 40-47).

For claim 87, Ikeda teaches polypropylene (col. 3, lines 40-47).

For claim 88, see claim 78.

For claim 91, see claim 80.

4. **Claims 83,88,90,91** are rejected under 35 U.S.C. 102(b) as being anticipated by Nuovo (IT224507 on form PTO-1449).

For claim 83, Nuovo teaches a plant container comprising a receptacle 10 having a top opening, a closed bottom, and a top flap of sufficient size to cover a plant placed in the receptacle, the receptacle and flap consisting essentially of a front panel 2a and a

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back panel 2b, each of the front and back panels including at least a first edge and a second edge, wherein the first edges of the panels and the second edges of the panels are connected to each other (at seams 3,4).

For claim 88, since the container of Nuovo is made out of a flaccid material, it will be inherent that when the panels of Ikeda are laid flat against each other when the container is in a collapsed state whereby the container may be compactly stored until ready for use.

For claim 90, Nuovo teaches a plant container as set forth in claim 83, wherein when the container is in its expanded state: a first seam 3 joining the first edges of the front and back panels extends centrally through a portion of the receptacle and through the top flap; and a second seam 4 joining the second edges of the front and back panels extends centrally through another portion of the receptacle; and an unjoined edge of each of the front and back panels partially define the open top of the receptacle (see fig. 7).

For claim 91, Nuovo teaches a method of making a batch of the plant containers set forth in claim 83, said method comprising the steps of: overlaying a first web 2a and a second web 2b of a suitable film material; forming essentially permanently sealed seams 3,4 between the first and second webs corresponding to the desired shape of the panels; and dividing the so-seamed webs into the containers (see fig. 7).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 70-77** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nuovo (as above) in view of Weder (US 5966869).

For claim 70, Nuovo teaches a plant container comprising a receptacle having a top opening, a bottom, and a top flap of sufficient size to cover a plant placed in the receptacle, the receptacle and flap including a front panel and a back panel, each of the front and back panels including a first edge connected together and a second edge connected together, the top flap being formed by a portion of the front panel and a portion of the back panel. See above claim 83. However, Nuovo is silent about a fold that is transverse to the first edge and that does not intersect the second edge.

Weder teaches a plant container having a fold 68 that is transverse to the first edge and that does not intersect the second edge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a fold that is transverse to the first edge and that does not intersect the second edge as taught by Weder in the plant container of Nuovo in order to cover the plant contained therein.

For claim 71, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein the first edge (where seam 3 is located) has a length that is longer than a length associated with the second edge (where seam 4 is located).

For claim 72, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein each panel has a triangular shape (see fig. 5).

For claim 73, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein wherein the first edge of each panel are sealed together to form a first seam 3 and the second edge of each panel are sealed together to form a second seam 4.

For claim 74, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein the first and second seams are essentially permanent.

For claim 75, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein when the container is in its expanded state; the first seam extends centrally through a portion of the receptacle and through the top flap (as in seam 3); and the second seam extends centrally through another portion of the receptacle (as in seam 4); and unjoined perpendicular edges of the front and back panels partially define the receptacle's open top and edges of the top flap.

For claim 76, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein the panels are made of a suitable film.

For claim 77, Nuovo as modified by Weder (emphasis on Nuovo) teaches wherein the suitable film is selected from the group consisting essentially of polyolefins, polyethylene, polypropylene, polyesters, polyethylene-terephthalate, and nylons. See translation of Nuovo as provided by Applicant.

For claim 79, although Nuovo as modified by Weder does not disclose a series of the containers being aligned and stacked in a pack, it is notoriously well known in the art that a plurality of flaccid material containers can be aligned and stacked in a pack for organization and space saving when stored. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to align and stack

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a plurality of containers of Nuovo as modified by Weder in a pack, since it is notoriously well known that containers of flaccid material can be aligned and stacked in a pack for organization and space saving when stored.

7. **Claims 79,82,89,93** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (as above).

For claims 79 & 89, although Ikeda does not disclose a series of the containers being aligned and stacked in a pack, it is notoriously well known in the art that a plurality of flaccid material containers can be aligned and stacked in a pack for organization and space saving when stored. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to align and stack a plurality of containers of Ikeda in a pack, since it is notoriously well known that containers of flaccid material can be aligned and stacked in a pack for organization and space saving when stored.

For claim 82, Ikeda does not disclose the steps of similarly aligning and stacking the containers in a collapsed state to form a pack for use at a consumer site. It is notoriously well known that containers of flaccid material such as that of Ikeda can be aligned and stacked in a collapsed state to form a pack for use at a consumer site such as a grocery store. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the steps of aligning and stacking the containers of Ikeda in a collapsed state to form a pack for use at a grocery store, since it is notoriously well known that containers of flaccid material such as that of Ikeda are sold at grocery store in collapsed state for consumer to purchase.

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For claim 93, Ikeda does not disclose the steps of similarly aligning and stacking the containers in a collapsed state to form a pack for use at a consumer site. It is notoriously well known that containers of flaccid material such as that of Ikeda can be aligned and stacked in a collapsed state to form a pack for use at a consumer site such as a grocery store. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the steps of aligning and stacking the containers of Ikeda in a collapsed state to form a pack for use at a grocery store, since it is notoriously well known that containers of flaccid material such as that of Ikeda are sold at grocery store in collapsed state for consumer to purchase.

8. **Claim 81** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda (as above) in view of Gilbert (US 5,647,168).

Ikeda discloses the step of forming sealing seams between the first and second webs and dividing the seam webs into containers (col. 5, lines 54-60 and fig. 12) but Ikeda is silent about the seam-forming and dividing steps are performed substantially simultaneously by hot wires.

Gilbert teaches a method of making a batch of containers 10 in which he employs hot wires sealing to form permanent sealing seams between a first web and a second web and dividing the webs into containers (col. 15, lines 40-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hot wires sealing as taught by Gilbert in the method of Ikeda in order to reduce the amount of material waste and to eliminate racing stripes and overlap between the containers (col. 15, lines 48-51 of Gilbert).

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9. **Claim 92** is rejected under 35 U.S.C. 103(a) as being unpatentable over Nuovo (as above) in view of Gilbert (US 5,647,168).

Nuovo discloses the step of forming sealing seams between the first and second webs and dividing the seam webs into containers but Nuovo is silent about the seam-forming and dividing steps are performed substantially simultaneously by hot wires.

Gilbert teaches a method of making a batch of containers 10 in which he employs hot wires sealing to form permanent sealing seams between a first web and a second web and dividing the webs into containers (col. 15, lines 40-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hot wires sealing as taught by Gilbert in the method of Nuovo in order to reduce the amount of material waste and to eliminate racing stripes and overlap between the containers (col. 15, lines 48-51 of Gilbert).

Allowable Subject Matter


10. **Claims 26,27,34,35,62** are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn